

Subchapter II. Financial Disclosure

Revisor's note. -- As originally enacted this subchapter contained §5817 which provided: "If any provision of this chapter or the application of any provision of this chapter to any person or circumstances is held invalid, the application of

such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby." This section has been omitted from codification.

§5811. Findings.

The General Assembly finds and declares that:

(1) In our democratic form of government, persons serving in state government hold positions of public trust which require rigorous adherence to the highest standards of honesty, integrity and impartiality.

(2) In order to insure propriety and preserve public trust, a public official or employee should refrain from acting in his official capacity on any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment, and should avoid even the appearance of impropriety.

(3) A disclosure of the personal financial interests of public officials will serve to guard against conduct violative of this public trust and to restore the public's faith and confidence in representatives of its government. (64 Del. Laws, c. 110, §1.)

§5812. Definitions.

(a) "Public officer" shall mean:

- (1) Any person elected to any state office; and
- (2) Any person appointed to fill a vacancy in an elective state office; and
- (3) Any candidate who has filed for any state office; and
- (4) The Research Director and Controller General of the Legislative Council; and
- (5) The Chief Justice and Associate Justices of the Supreme Court; and
- (6) The Chancellors and Vice-Chancellors of the Court of Chancery; and
- (7) The President Judge and Associate Judges of Superior Court; and
- (8) The Chief Judge and Associate Judges of Family Court; and
- (9) The Chief Judge and Resident Judges of the Court of Common Pleas; and
- (10) The Chief Magistrate and Justices of the Peace; and
- (11) The State Court Administrator and the administrators of Superior Court, Family Court, the Court of Common Pleas, and the Justice of the Peace Courts; and
- (12) The Public Guardian, the Executive Secretary of the Violent Crimes Compensation Board, the Executive Director of the Child Placement Review Board; and
- (13) All Cabinet Secretaries and persons of equivalent rank within the Executive

Branch; and

(14) All division directors and persons of equivalent rank within the Executive Branch; and

(15) The State Election Commissioner and the Administrative Directors and Assistant Administrative Directors of the Department of Elections; and

(16) The State Fire Marshal and the Director of the State Fire School; and

(17) The Adjutant General of the Delaware National Guard.

Elected and appointed officials of political subdivisions of the State, public school districts of the State and state institutions of higher learning shall not be deemed to be public officers within the meaning of this subchapter.

(b) “Constructively controlled” means:

(1) A financial interest in the name of another which is controlled by a public officer by virtue of any relationship of the public officer to another person and which directly benefits the public officer;

(2) Any financial interest of a public officer held jointly with the spouse or child of such public officer;

(3) Any financial interest of the spouse or minor child of a public officer.

(c) “Instrument of ownership” includes, but is not limited to, common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds and debt instruments, if convertible to equity instruments.

(d) “Position of management” means officer, director, partner, proprietor or other managerial position in a business enterprise.

(e) “Fair market value” means, if a security, the quoted price as of January 1 of the year in which the report required by §5813 of this title is filed, or, if not a security, the price at which the public officer would sell as of January 1 of the year in which the report required by §5813 of this title is filed.

(f) “Equity instrument” means any ownership interest in a corporation or other legal entity giving rights to the holder upon liquidation of the entity.

(g) “Time or demand deposits” means checking and savings account in banks or deposits or share in savings and loan institutions, credit unions or money market funds.

(h) “Debt instrument” means bonds, notes, debentures, mortgages or other securities having a fixed yield if not convertible to equity instruments.

(i) “Professional organization” means an individual engaged in, or an association

organized pursuant to, federal or state law for the practice of medicine, law, accounting, engineering or other profession.

(j) "Income for services rendered" means income from a single source and includes salary, wages, consulting fees and professional services.

(k) "Capital gain" means capital gains required to be reported to the Internal Revenue Service pursuant to federal internal revenue laws.

(l) "Reimbursement for expenditures" means any payments to a public officer for expenses incurred by that public officer.

(m) "Honoraria" means fees received for speeches, written articles and participation in discussion groups and similar activities, but does not include reimbursement for expenses.

(n) "Business enterprise" means corporation, partnership, sole proprietorship or any other individual or organization carrying on a business or profession.

(o) "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a spouse or any relative within the 3rd degree of consanguinity of the person or person's spouse or from the spouse of any such relative. (64 Del. Laws, c. 110, §1; 64 Del. Laws, c. 223, §1; 67 Del. Laws, c. 418, §1.)

(p) "Commission" means the State Public Integrity Commission. (64 Del. Laws, c. 110, §1; 64 Del. Laws, c. 223, §1; 67 Del. Laws, c. 418, §1; 69 Del. Laws, c. 467, §20.)

Revisor's note. -- Section 3 of 67 Del. Laws, c. 418 provides: This act shall apply to financial disclosure statements filed after July 23,

1990."

Effect of amendments.-- 67 Del. Laws, c. 418, effective July 23, 1990, added (o).

Revisor's note. -- Section 1 of 69 Del. Laws, c. 467, provides: "This act shall be referred to as the 'Public Integrity Act of 1994.'"

Apr. 15, 1996."

Section 32 of 69 Del. Laws, c. 467, provides: "This act shall take effect July 15, 1994, except as to those sections where another effective date is expressly indicated."

Section 31 of 69 Del. Laws, c. 467, provides: "The legislative agent reports on file with the Legislative Council as of Jan. 15, 1996 shall be transferred to the Public Integrity Commission by

Effect of amendments. -- 69 Del. Laws, c. 467, added (p).

§5813. Report disclosing financial information.

(a) Every public officer as defined in §5812 of this title shall file a report disclosing financial interests, as hereinafter provided. Each report shall be on a form prescribed by

the Commission, shall be signed by the public officer, shall be notarized and shall include at least the following information:

- (1) The name and position of the public officer; and
- (2) The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the public officer in any business enterprise in which legal or equitable ownership is in excess of \$5,000 fair market value or from which income of more than \$5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and
- (3) The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the public officer is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is constructively controlled by the public officer, from which income of more than \$5,000 was either derived during the preceding year or might reasonably be expected to be derived during the current calendar year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (2) of this subsection need not be reported under this subsection; and
- (4) The source of each of the following items received during the preceding calendar year, or reasonably expected to be received during the current calendar year:
 - a. Any income derived for services rendered exceeding \$1,000 from a single source, unless such income is otherwise identified pursuant to paragraph (2) or (3) of this subsection; or
 - b. Any capital gain exceeding \$1,000 from a single source other than from the sale of a residence occupied by the public officer; or
 - c. Any reimbursement for expenditures exceeding \$1,000 from a single source; or
 - d. Any honoraria; or
 - e. Any gift with a value in excess of \$250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value.
- (5) Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000.

(b) Each report required by this section shall contain a sworn certification by the

public officer that he has read the report, and that to the best of his knowledge and belief it is true, correct and complete, and that he has not and will not transfer any assets, interests or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(c) Not later than 14 days after becoming a public officer as defined in §5812 of this title, the report required by this subchapter shall be filed. Thereafter, the report shall be filed on February 15 of each year.

(d) Each report required by this Section shall be filed with the Commission.

Revisor's note. -- Section 1 of 69 Del Laws, c. 467, provides: "This act shall be referred to as the 'Public Integrity Act of 1994.'"

Section 31 of 69 Del. Laws, c. 467, provides: "The legislative agent reports on file with the Legislative Council as of Jan. 15, 1996 shall be transferred to the Public Integrity Commission by Apr. 15, 1996."

Section 32 of 69 Del. Laws, c. 467, provides: "This act shall take effect July 15, 1994, except as to those sections where another effective date is expressly indicated."

Effect of amendments. -- 67 Del. Laws, c. 418, effective July 23, 1990, inserted (a)(4)(e). 69 Del. Laws, c. 467, added the second sentence in (a)(4)(e).

§5814. Retention of reports.

(a) The Commission shall keep the reports required by this subchapter on file for so long as the person submitting such report is a public officer of this State, as defined in §5812 of this title, and for at least 5 years thereafter. All reports on file with agencies other than the Commission as of January 15, 1995 shall be transferred to the Commission by April 15, 1995.

(b) The reports filed pursuant to this subchapter shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of this title.

Revisor's note. -- Section 1 of 69 Del Laws, c. 467, provides: "This act shall be referred to as the 'Public Integrity Act of 1994.'"

Section 31 of 69 Del. Laws, c. 467, provides: "The legislative agent reports on file with the Legislative Council as of Jan. 15, 1996 shall be

transferred to the Public Integrity Commission by Apr. 15, 1996."

Section 32 of 69 Del. Laws, c. 467, provides: "This act shall take effect July 15, 1994, except as to those sections where another effective date is expressly indicated."

§5815. Violations; penalties; jurisdiction of Superior Court.

(a) Any public officer who willfully fails to file a report in violation of §5813 of this title shall be guilty of a class B misdemeanor.

(b) Any public officer who knowingly files any report required by §5813 of this title that is false in any material respect shall be guilty of a class A misdemeanor.

(c) The Commission may refer to the Commission Counsel for investigation and/or may refer any suspected violation of this subchapter to the Attorney General for investigation and prosecution; provided however, that the Commission shall refer any suspected violation of this subchapter by a member of the General Assembly or the Judiciary to the Attorney General, who shall have the exclusive authority to investigate and prosecute or otherwise recommend remedies or sanctions for such suspected violation. (69 Del. Laws, c. 467, §25.)

(d) Superior Court shall have jurisdiction over all offenses under this subchapter. (64 Del. Laws, c. 110, §1.)

Revisor's note. -- Section 1 of 69 Del Laws, c. 467, provides: "This act shall be referred to as the 'Public Integrity Act of 1994.'"

Section 31 of 69 Del. Laws, c. 467, provides: "The legislative agent reports on file with the Legislative Council as of Jan. 15, 1996 shall be transferred to the Public Integrity Commission by Apr. 15, 1996."

Section 32 of 69 Del. Laws, c. 467, provides: "This act shall take effect July 15, 1994, except as to those sections where another effective date is expressly indicated."

Effect of amendments. -- 69 Del. Laws, c. 467, rewrote (c).

§5816. Protection of confidentiality.

Nothing contained in this subchapter shall be construed as requiring the disclosure of any fact the confidentiality of which is protected by any applicable federal or state law. (64 Del. Laws, c. 110, §1.)